

F. HEARING PREPARATION:**CLARIFYING INFORMATION:**

Effective preparation for a hearing includes a complete review of the department record. Documents are identified for their potential use as exhibits at the hearing. Witnesses should be interviewed and prepared for their testimony. Errors in the record should be corrected. Notices that are incomplete or do not meet advance or adequate requirements must be corrected and reissued before the hearing. **[WAC 388-08-425 (m)]**

The fair hearing preparation is the responsibility of the FHC.

The Fair Hearing report and proposed exhibits (Fair Hearing Packet) should be made available to the client and their representative as soon as possible before the hearing. The client may have seen the documents before but they will be in a different format and may not look familiar.

If an interpreter is involved, the Fair Hearing Packet should be given to the interpreter in advance of the hearing day if possible.

EVIDENCE: [See WAC 388-08-452 for the complete text of the rule]

1. Evidence can be in the form of documents or testimony.
2. Documentary evidence can come from different sources. Documents which can be used as evidence in a hearing include, but are not limited to:
 - a. Letters/notes provided by the client or others.
 - b. Applications, MSR, or other forms signed by the client.
 - c. Medical reports, employer statements, collateral statements or other documents provided by a third party and used by the department in the eligibility decision.
 - d. Financial computations, ACES screen prints including CAFI, MAFI and FSFI, Progressive Evaluation Process worksheets
 - e. Notices or letters sent by the department to the client either through ACES

or manual notes.

- f. Verification documents provided by the client (landlord statement, wage stubs).
3. Testimony is provided by witnesses who have direct knowledge of facts related to the issue for hearing. It is appropriate to use a witness when the witness can testify:
- a. That a document is authentic because the witness either prepared the document or observed the preparation;
 - b. About the source of a document because the witness either received the document or observed its receipt;
 - c. About his or her own actions;
 - d. About the actions of others; or
 - e. About statements made by the appellant to the witness.

FHC RESPONSIBILITY

- 1. Prepare the Fair Hearing Report (DSHS 09-354(x)) or another document that contains the following information:
 - a. A brief statement of the issue for hearing;
 - b. A brief statement of the facts of the case which includes the department position in the case;
 - c. The names of any witnesses who will be called;
 - d. A list of the documents to be proposed as exhibits; and
 - e. The rules the department relied on when making the eligibility decision.
- 2. Select and prepare the department's proposed exhibits. The proposed exhibits are attached to the Fair Hearing Report.

- a. Copy documents, including cover letters and envelopes if available.

ACES notices must currently be submitted as screen prints. The screen print is an extract of the actual document. It may be helpful to have a sample of the complete document to submit if available [see WAC 388-08-452(3)]

- b. Review copies to assure that they are:

- Clear;
- Readable; and
- Complete.

- c. Prior to the hearing, provide a copy of each document as an attachment to the Fair Hearing Report to:

- Office of Administrative Hearings,
- The appellant and their representative
- The interpreter
- Department witnesses

3. Prepare department witnesses:

- a. Inform the witness of the date, time and location of the hearing. If possible, estimate the amount of time that will be required of the witness.
- b. Explain that the witness will be sworn in.
- c. Explain that the absolute truth is required. If the witness does not know the answer to a question, the witness should say so.
- d. Explain that the appellant, the appellant's representative and the ALJ (1) may ask questions.
- e. Explain that unless specifically requested to, the witness should not guess or estimate in their answers
- f. Explain that only direct answers should be given. Personal opinions should be left out of answers

4. Request Subpoenas [see WAC 388-08-446 for a complete text of the rule]

In unusual circumstances, it may be necessary to subpoena persons to provide testimony or to bring documents. Subpoenas should be used only when the evidence is important to the case and it cannot be obtained voluntarily.

Subpoenas can be issued by the ALJ, the department, or attorneys for parties.

To obtain a subpoena, provide the following information to the AAG on the DSHS 09-617(x), Referral to Attorney General or ACES letter FHC 3:

- The name and address of the person to be issued the subpoena,
- The reason for the subpoena
- The appellant's name
- The appellant's address
- The docket number
- Any documents to be provided by the person being subpoenaed. Identify the documents as specifically as possible, including dates.
- The time, date and place of the hearing.

It is the responsibility of the CSO Administrator or their designee, to serve subpoenas issued by the AAG. See WAC 388-08-446 for instructions regarding delivery of subpoenas.

5. Request for removal of the Administrative Law Judge:

The department, the client or their representative may request that an assigned ALJ be removed from a case. If the request is approved, the OAH will assign another ALJ to hear the case.

This is a serious step and it should not be taken by the FHC without the approval of the CSO Administrator and consultation with the appropriate program office or CSD headquarters. See WAC 388-08-425 (4),(5) for instructions regarding completing this request.

Continuances: a change in the date, the time or the location of a hearing. [see WAC 388-08-545 for the complete text of the rule]

Only the ALJ has the authority to approve a request for a continuance.

Both parties must have an opportunity to object to the continuance before a decision is made by the ALJ. If either party disagrees with the continuance, arrange for an expedited hearing, usually by phone, to allow the ALJ to hear from both sides. The ALJ will usually rule immediately regarding the request for continuance.

Most continuance requests are completed and approved by telephone; however, the ALJ may want to speak to the parties before granting a continuance. The FHC should be prepared to provide a phone number where the appellant can be reached. If the request is made in person on the day of the hearing, the ALJ may ask to speak to the appellant in the CSO.

- Client requests:

The FHC should review the record to confirm that the hearing is not being unnecessarily delayed.

- Department requests:

The client should be contacted to obtain agreement before contacting the ALJ.

If the client and the department agree on the continuance, contact the ALJ to make the request. Provide the reason for the continuance, the additional time requested and that the parties are in agreement.